within the proper time ought to be the sufferer, but that in other cases the objection of lateness ought not to be listened to, and any injury caused by the delay may be compensated for by the payment of costs. This I think a correct view." Their Lordships note that these observations were made in reference to a case where the application was to set aside a judgment by default which is on a different basis from an application to extend the time for appealing. In the one case the litigant has had no trial at all: in the other he has had a trial and lost. Their Lordships do not regard these observations as of general application.

Their Lordships are satisfied that to allow this appeal would be substantially to interfere with the practice of the Board in regard to applications of this nature. The Board is not familiar with the practice in local courts and their Lordships are most unwilling to interfere with the exercise of their discretion upon questions of procedure.

For these reasons their Lordships will report their opinion to the Head of Malaysia that the appeal should be dismissed and that the appellant should pay the costs.

Appeal dismissed.

Solicitors: *Parker Garrett & Co.; Slaughter & May.*

KOH PENG MOH v. YAHIYA

[O.C.J. (Winslow J.) November 24, 1964]

[Singapore — Suit No. 54 of 1964]

Contract — Sale of land — Exercise of option — Agreement subject to formal contract.

This was an action on an option to sell land subject to formal contract. The option was exercised but no contract or agreement for sale had been concluded as the buyer had been advised by his solicitors not to sign the agreement for sale tendered by the vendor until certain searches had been completed.

Held: the exercise of an option to sell land at a stipulated price within a prescribed time, subject to formal contract, cannot be regarded as a concluded contract giving rise to a remedy in damages for breach thereof, until a formal contract had in fact been concluded.

Cases referred to:—

(1) *Low Kar Yit & Ors.* v. *Mohamed Isa & Anor.* [1963] M.L.J. 165.

(2) *Luxor (Eastbourne) Ltd.* v. *Cooper* [1941] 1 All E.R. 33.

(3) *McCallum* v. *Hicks* [1950] 2 K.B. 271.

CIVIL SUIT.

R. E. Redrup for the plaintiff.

P. Selvadurai for the defendant.

Winslow J.: In my opinion the exercise of an option to sell land at a stipulated price within a prescribed time, subject to formal contract, cannot be regarded as a concluded contract giving rise to any remedy in damages for breach thereof, until a formal contract has in fact been concluded. This follows the line of reasoning adopted by Gill J. in *Low Kar Yit & Ors.* v. *Mohamed Isa & Anor.*[1] with which I agree entirely.

In this case, no contract or agreement for sale was concluded and the plaintiff acquired no vested right under any contract merely by finding a buyer who was ready, willing and able to purchase the land in question.

The buyer was advised by his solicitors not to sign the agreement for sale tendered by the vendor/defendant until certain searches had been completed. *Luxor (Eastbourne), Ltd.* v. *Cooper*[2] is authority for saying that there can be no implied term that the vendor will not refuse to go on with a proposed sale so long as matters are still in negotiation and no binding contract has been made, notwithstanding the fact that a willing and able purchaser has been introduced to the vendor by his agent. This principle was applied in the latter case of *McCallum* v. *Hicks*[3] where Denning L.J. held: "A person may not properly be said to be willing to purchase unless he has given irrevocable proof of his willingness by entering into a binding contract to purchase."

In the result it follows that the plaintiff in this action cannot succeed. The option, subject to formal contract, to sell the land was merely a conditional contract and on failure to comply with the condition vested no right in the plaintiff and no legally binding contract was thereby created.

Judgment will be entered for the defendant with costs.

Judgment for the defendant.

Solicitors: *Osborne-Jones & Redrup; Lee & Lee.*

NG ENG HIAM v. KOH GEOK NOI

[O.C.J. (Gill J.) November 25, 1964]

[K.L. — Civil Suit No. 96 of 1963]

Landlord and tenant — Recovery of possession — Death of tenant — Widow continuing in occupation — Notice to quit — Rent in arrears — Control of Rent Ordinance, 1956, s. 12.

This was an action for recovery of premises which were within the scope of the Control of Rent Ordinance, 1956. The tenant of the premises was one Poon Ting Yat and after his death his widow continued to occupy the premises. Notice to quit terminating the tenancy was sent addressed to Poon Ting Yat and this was

acknowledged by the wife of the widow's brother-in-law who lived with her in the premises. At the time of the notice to quit rent lawfully due was in arrears for over 14 days. The widow had also sublet the premises and it was alleged that she received from the subtenants in the aggregate more than 10% of the rent of the whole premises and had failed to supply the landlord with a statement in writing giving particulars of the subletting.

Held: (1) where the widow of a tenant remains in possession of the premises after the death of the tenant, the contractual tenancy continues in existence until it is terminated by notice;

(2) in this case rent lawfully due was in arrears for over 14 days at the time of the notice to quit and therefore the plaintiff was entitled to bring an action of possession on this ground;

(3) the plaintiff was also entitled to bring the action for possession on the ground that she had received from her subtenants in the aggregate sums which exceed by more than 10% of the rent of the whole premises.

Cases referred to:—

(1) *Moodie* v. *Hosegood* [1952] A.C. 61.

(2) *Kechik & Ors.* v. *Habeeb Mohamed & Anor.* [1963] M.L.J. 127, 129.

(3) *Egerton* v. *Rutter* [1951] 1 T.L.R. 58, 61; [1951] K.B. 472, 477.

(4) *Sweeney* v. *Sweeney* (1876) I.R. 10 C.L. 375, 379.

(5) *Rees* v. *Perrott* (1830) 4 C. & P. 230.

(6) *Harrowby* (*Earl*) v. *Snelson* [1951] 1 All E.R. 140.

CIVIL SUIT.

Robert K. C. Hoh for the plaintiff.

P. S. Moorthy for the defendant.

Cur. Adv. Vult.

Gill J.: This is an action for the recovery of possession of premises known as 215 Pudu Road, Kuala Lumpur (hereinafter referred to as the premises). The premises are within the scope of the Control of Rent Ordinance, 1956, and the claim for possession is made under paragraphs (a), (b) and (j) of sub-section (1) of section 12 of the Ordinance which read as follows:

"12(1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

(a) where rent lawfully due has been in arrear for fourteen days or upwards:

Provided that rent shall not be deemed to be in arrear if the tenant proves that it was tendered before such date;

(b) where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under the provisions of this Ordinance), so far as the obligation is consistent with the provisions of this Ordinance, has been broken or not performed by the tenant and the court considers it reasonable that such order or judgment be made or given;

(j) where the tenant having sub-let the premises or part thereof receives in respect of such sub-letting rents (exclusive of any payment for the services provided by any local authority) for any sub-let part of the premises in excess of the maximum permitted rent for that part or rents which including the apportioned rental or value of any part of the premises retained by the tenant or not sub-let by him exceed in the aggregate by more than ten per centum the rent of the whole premises;".

The facts of the case are not very much in dispute. The plaintiff became the registered owner of the premises as trustee for his son, Ng Tian Meng, in 1951. The tenant of the premises then was one Poon Ting Yat who died on 26th January, 1952. The defendant is the widow of Poon Ting Yat. She was residing at the premises with her husband at the time of his death, and she has continued to reside there ever since.

On 24th April, 1952 the defendant caused her solicitor Dr. H. Y. Teh to write a letter to the plaintiff stating that Poon Ting Yat had died leaving a widow and six children, and that since he did not leave any assets except the tenancy of the premises it would be a great hardship and a source of wasteful expenditure for the widow to take out letters of administration of his estate. In the last paragraph of the letter the solicitor said that his client would be extremely grateful if the plaintiff would allow her to continue the tenancy in the name of Mrs. Poon Ting Yat. A copy of this letter has been produced in evidence (Exhibit D.5), but the plaintiff says that he does not remember to have received it. As the letter was not sent under a registered cover, it is not possible to say that it reached the plaintiff. In any event, since no reply was received to this letter it cannot be said that the plaintiff ever agreed to let the defendant have a fresh tenancy in place of the tenancy which he had granted to her late husband.

The monthly rent of the premises was $191. The plaintiff's evidence is that rent was payable in advance and that it was paid at his office at first by Poon Ting Yat himself and later by his brother named Poon Chun Hon or someone else. Poon Chun Hon (D.W.2) has given evidence to say that after the death of his brother Poon Ting Yat he took over the affairs of the defendant's tenancy of the premises, and that it was he who notified the plaintiff about his brother's death through his solicitor Dr. H. Y. Teh. The defendant has given evidence to say that she is the tenant of the premises but that her husband's younger brother Poon Chun Hon looks after her affairs in respect of her tenancy. She has further said that she is not familiar with matters relating to the tenancy and that her brother-in-law does not make any report to her about what he does in respect of the tenancy. She occupies two rooms in the premises and her brother-in-law occupies two other rooms. He does not pay her the rent collected from the sub-tenants, and he pays the rent to the landlord out of money which he collects from the sub-tenants. She

further says that she does not know whether her brother-in-law is paying any rent for the two rooms which he occupies nor does she know whether he includes any money from himself as being rent for the rooms which he occupies. He was living on the premises when her husband was alive, and he has lived there ever since her husband's death. He writes all the letters and deals with the sub-tenants, so that she is only a tenant in name. From her evidence and from the evidence of her brother-in-law it is quite clear that he is her agent in all matters relating to the tenancy.

As I have stated, the plaintiff's story is that rent has always been paid at his office. This has not been seriously challenged either by the defendant or her brother-in-law Poon Chun Hon. There is, however, controversy as to whether the rent was payable in advance or in arrear at the end of the month. The plaintiff's story, as I have stated above, is that rent for any particular month was paid at the beginning of the month. The case for the defendant, on the other hand, is that it was paid at the end of the month. Two receipts dated 31st October, 1958 (Exhibit D.6) and 31st May, 1961 (Exhibit D.7) have been produced. As they are stated to be rent receipts for the months of October 1958 and May 1961 respectively, it seems clear that rent was in fact paid at the end of the month. This is also borne out by the notice to quit dated 30th October, 1962, to which I shall refer at a later stage, in which it was stated that rent was in arrear for 9 months, i.e., from January to September 1962.

It is equally clear from the evidence that the defendant has been in possession of the premises as the widow of Poon Ting Yat deceased, and that her brother-in-law Poon Chun Hon has been her agent in all matters relating to the tenancy ever since. It is also equally clear that the rent has always been paid at the office of the plaintiff, so that it was not a part of the tenancy agreement that a demand for rent should be made at the premises. I further make a finding of fact that the rent was payable at the end of the month, there being evidence that two months' advance rent had been paid at the commencement of the tenancy.

Rent appears to have been paid regularly until the end of 1961, but no rent was paid thereafter until the plaintiff caused a notice to quit to be sent by a letter dated 30th October, 1962 by his then solicitors. This letter (Exhibit P.1) was addressed to Mr. Poon Ting Yat, 215 Pudu Road, Kuala Lumpur and sent under a registered cover. The registered cover was received by Poon Chun Hon's wife named Lee Seow Chan on 3rd November, 1962 because she signed the A.R. card (Exhibit P.2). It is stated in P.1 that rent at the rate of $191 per month was in arrears for the months January to September 1962, both months inclusive, amounting to the sum of $1,719. It is further stated in the letter that various portions of the premises had been sub-let to numerous persons, and mention was made of the failure on the part of Poon Ting Yat to supply the plaintiff with particulars of each of these sub-lettings in breach of section 14 of the Control of Rent Ordinance. The plaintiff has given evidence to say that when he instructed his solicitors to send the notice to quit he was not aware that Poon Ting Yat was dead, and that when his solicitors informed him that Poon Ting Yat was dead and that Poon Ting Yat's brother had paid a sum of $1,910 at their office he instructed them to write the letter dated 12th November, 1962 (Exhibit P.3) to Poon Ting Yat's widow. This letter according to him was written on his instructions without prejudice and on the basis that acceptance of rent would not create a new tenancy.

It is common ground that at the time of his death Poon Ting Yat was in occupation of the premises as a monthly tenant. He was not a statutory tenant but a contractual tenant, so that after his death the tenancy continued in existence for the benefit of his estate until it was terminated by notice. Mr. Robert Ho on behalf of the plaintiff says that, in view of the definition of the word "tenant" in section 2 of the Ordinance, the defendant as the widow of the contractual tenant became a statutory tenant in 1952 on her husband's death. For his contention he has cited the case of *Moodie* v. *Hosegood.*[1] I do not agree with what he says, because what was decided in that case was that the words "the widow of a tenant who was residing with him at the time of his death" include the widow of a contractual, as well as statutory tenant, and accordingly, enable her to claim the protection of the Rent Restriction Acts.

The correct position in my opinion is that where a widow has been in possession since the date of her husband's death the contractual tenancy continues in existence until it is terminated by notice. It is not denied that in the present case the widow has been in possession. Admittedly the contractual tenancy did not vest legally in the defendant until she became administratrix: until then it was probably vested in the Chief Justice even though the death took place prior to the coming into effect of the Probate and Administration Ordinance 1959, on 1st January, 1960. It could, however, have been terminated by service of a notice to quit on the defendant (see *Kechik & Others* v. *Habeeb Mohamed & Another* [2]). This view is supported by the case of *Egerton* v. *Rutter,*[3] in which Lord Goddard C.J. quoted with approval the

following passage from the judgment of the Irish Court of Exchequer in the case of *Sweeney* v. *Sweeney* [4]:—

"Since the decision of *Rees* v. *Perrott*,[5] *supra*, it has been accepted as settled law that, on the death of a tenant from year to year, the landlord is not bound to raise a personal representative to the deceased tenant as a condition precedent to the determination of the tenancy by a notice to quit, he can, in the absence of of a personal representative, treat the party in possession as the tenant to all intents and purposes. The reason given for this by some is that any person holding the possession or assuming the ownership of the land may be treated as assignee of the tenant's interest."

In the present case the plaintiff did not take any steps to terminate the tenancy until his solicitors, on his instructions, wrote the letter dated 30th October, 1962 (Exhibit P.1) which was addressed to Poon Ting Yat in the belief that Poon Ting Yat was still alive. This notice was received by the wife of Poon Chun Hon who, as I have stated above, was for all practical purposes the agent of the defendant. Poon Chun Hon paid the sum of $1,910, being rent for the months from January to October 1962, both months inclusive, on 8th November, 1962. He has stated in evidence that when he paid this sum he was not aware of the existence of the notice to quit dated 30th October, 1962. I do not accept that part of his evidence. To my mind, he was telling a deliberate lie when he said that he knew nothing about the notice Rent had not been paid for over 10 months, and yet he would have the court believe that he made up his mind all of a sudden to go and pay the rent. The truth is that his wife passed on the notice to him and he, in a desperate bid to avoid the defendant being thrown out of the premises, paid the rent for 10 months. The notice came to his knowledge and he paid the rent on behalf of the defendant. This knowledge of the notice must be imputed to the defendant. The payment of the rent was received by the plaintiff without prejudice to the notice to quit dated 30th October, 1962 as stated in red ink on the top of the rent receipt (Exhibit P.10).

I have stated above that until the notice to quit was served the estate of the deceased vested in the Chief Justice, but since the Chief Justice was not in possession and had no responsibility for the rent the notice to quit could be validly served on the defendant, notwithstanding that the legal estate had vested in the Chief Justice. Since the premises were in occupation of the defendant after the tenant's death, the form of address of the notice to quit did not render it invalid (see *Harrowby (Earl)* v. *Snelson and Another* [6]). Moreover, a further letter dated 12th November, 1962 (Exhibit P.3) was addressed by the plaintiff's solicitors to the defendant herself in which mention was made of the notice to quit dated 30th October, 1962 addressed to Mr. Poon Ting Yat. It was pointed out in the letter that the rent paid by her brother-in-law Poon Chun Hon as her agent on 8th November, 1962 was accepted without prejudice to the notice to quit and also on the express understanding that it would not create any fresh tenancy.

It is clear that rent lawfully due for the premises had been in arrear for 14 days or upwards on the date of each of the notices to quit and that rent had not been tendered before that date. The acceptance of rent on 8th November, 1962 did not constitute a new tenancy. Whether acceptance of rent creates a new tenancy depends on the intention of the parties. In the present case there is no evidence of any such intention on the part of the plaintiff. Mr. Moorthy on behalf of the defendant contended that the material date is the date on which notice to quit is served and rent does not fall into arrear within 14 days from that date. That might have been a valid argument if possession were sought under section 13(1)(a) of the Control of Rent Ordinance, 1948, which contains the words "at the date of the service of the notice determining the tenancy". Under the present Ordinance all that is required is that rent lawfully due must be in arrear for 14 days or upwards, and it was so in arrear in the present case. In all the circumstances of the case the plaintiff is entitled to possession under paragraph (a) of section 12(1) of the Control of Rent Ordinance, 1956.

I now come to the ground in paragraph 12(1)(j) of the Ordinance, which applies where the tenant receives from his sub-tenants in the aggregate more than 10 per centum of the rent of the whole premises. The evidence here is that the defendant was receiving a sum of $259 a month from the sub-tenants. Her contention is that she was paying more than $70 a month in respect of electricity and water out of the rents collected from the sub-tenants. Even so, taking into account the fact that she was retaining for herself two rooms the minimum rent of which would be more than $40 a month, the aggregate was more than $210.10 which was the maximum permitted rent. She was therefore clearly in breach of paragraph (j) of section 12(1) of the Ordinance, so that on this ground as well the plaintiff is entitled to possession of the premises.

The last ground on which possession is sought is that set out in Paragraph (b) of section 12(1) of the Ordinance. The plaintiff's argument here is that as the defendant had failed to supply the plaintiff as the landlord with a statement in writing of the sub-letting, giving particulars of the occupancy, including the names of the sub-tenants and the rents charged, she had

committed a breach of the tenancy. It is further alleged that she committed a breach of the tenancy by not complying with the requirement of section 14(1)(b) by prominently displaying in or upon the premises a notice in the form set out in the Second Schedule to the Ordinance clearly setting out the rent of the whole premises and the rent of every part so sub-let. In my opinion, the provisions of section 14 of the Ordinance cannot be treated as the implied terms of the contractual tenancy. They are merely the personal obligations of the tenant, the non-compliance of which renders him liable to be prosecuted under section 14(2) of the Ordinance. On this ground therefore the claim for possession must fail.

In the result there will be judgment for the plaintiff for delivery up of vacant possession of the premises on or before 31st March, 1965, mesne profits at the rate of $191 a month from the date of writ until 31st March, 1965, double rent at the rate of $382 a month from 1st April, 1965 to the date of delivery of vacant possession of the premises, and costs.

Judgment for the plaintiff.

Solicitors: *Shook Lin & Bok; P. S. Moorthy.*

MAHNI v. ALI & ANOR.

[A.C.J. (Gill J.) November 27, 1964]

[K.L. — Civil Appeal No. 10 of 1964]

Land Laws — Recovery of possession — Approved application of State land — Assignment of beneficial rights — Whether assignee can bring action for possession.

One Sapiah, whose application for State land had been approved, assigned her beneficial rights to expectation in respect of the land, to the appellant. The first respondent was residing with Sapiah on the land. Sapiah vacated the land but the first respondent refused to do so and allowed the second respondent to go into occupation of the land. The appellant brought an action for recovery of possession. The assignment to him was registered after the action was commenced.

Held: the effect of the contract of assignment was to make the appellant a licensee of the approved applicant and he therefore became entitled to occupation and possession of the land and entitled to recover possession of it from the respondents, who had no right or title to the possession.

Case referred to:—

(1) *Malaya Borneo Building Society Ltd.* v. *Ramachandran* [1959] M.L.J. 182.

CIVIL APPEAL.

Eugene Lye for the appellant.

K. Chelvanayagam for the respondents.

Gill J.: This is an appeal against the dismissal by the magistrate's court, Kuala Lumpur of an action in that court by the appellant as plaintiff against the respondents as defendants for the recovery of possession of a piece of land in Sungei Way New Village whereon is erected a dwelling known as house No. 235, Road 7, Lot No. 131.

The facts of the case in the magistrate's court were not in dispute. The land in question is State land. One Sapiah binti Abdul Hamid made an application for its alienation to her. The Collector of Land Revenue (KL), Sungei Besi by a letter dated 4th July, 1958 informed her that her application for dwelling house site bearing Lot No. 131 at Sungei Way New Village in the Mukim of Petaling, District of Kuala Lumpur had been approved on the terms and conditions set out in that letter. The letter stated that on her paying a sum of $65.50 by way of premium, rent and survey fees, etc., her name would be recorded in the roll of approved applications. Subsequently her name was in fact recorded in Approved Application No. A 38337/59.

On or about 9th August, 1961 the plaintiff purchased from Sapiah the beneficial rights to expectation of title in respect of the piece of land, and an assignment form as required under the Land Rules, 1930 was executed and attested by the Collector of Land Revenue presumably on 29th November, 1961, on which date the requisite fee was paid. This assignment was registered on 29th November, 1963 and the plaintiff's name was recorded in the roll of approved applications, the approved application being numbered as AA29/63.

Prior to the so-called purchase of the land the first defendant, who is the stepfather of Sapiah, was residing with Sapiah on the land. Sapiah vacated the land on or about the 21st November, 1961 in order to yield vacant possession to the plaintiff on completion of the purchase as aforesaid, but the first defendant refused to quit and has remained in occupation ever since. Subsequently he allowed the second defendant to go into occupation and collected $35 a month as rent from the second defendant.

The learned magistrate decided that as the assignment was not registered until 29th November, 1963, and since the action before him was commenced on 5th July, 1963, the plaintiff had no right to sue the defendants. He therefore dismissed the action. Thus, the only question to be decided on this appeal is whether the appellant had a right to sue before her name was recorded in the roll of approved applications.

The legal position on a person's name being recorded as an approved applicant was stated by Smith J. in *Malaya Borneo Building Society Ltd.* v. *M. Ramachandran* [1] at page 186 as follows:—